

STATE OF MICHIGAN
COURT OF APPEALS

ROSEMARY GOODLANDER, Personal
Representative for the Estate of Kim Goodlander,
deceased,

UNPUBLISHED
March 14, 2006

Plaintiff-Appellant,

v

CAROL NAIMI, d/b/a WHIGVILLE PARTY
STORE, a/k/a GRAND BLANC MARKET,

No. 265714
Genesee Circuit Court
LC No. 05-081678-NO

Defendant-Appellee.

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition. Because the exclusive remedy provision of the dramshop act, MCL 436.1801, bars plaintiff's wrongful death claim, the trial court's grant of summary disposition under MCR 2.116(C)(8) was proper, and we affirm.

This case arises out of the death of plaintiff's decedent, Kim Goodlander, on July 2, 2004. On that day, Goodlander went to defendant's store and purchased alcohol. Plaintiff alleged in her complaint that defendant knew Goodlander was an alcoholic but sold alcoholic beverages to Goodlander anyway. Goodlander left defendant's store, consumed the alcohol, and then returned to purchase more alcohol. Goodlander remained on defendant's premises consuming alcohol over the next several hours to the point of intoxication. According to plaintiff's complaint, Goodlander died on defendant's premises that evening or the following day "as a result of said intoxication and [his] preexisting medical conditions, including his alcoholism."

As a result of Goodlander's death, plaintiff filed this action against defendant alleging wrongful death. Defendant filed a motion for summary disposition under MCR 2.116(C)(8) in lieu of an answer, arguing that by operation of the dramshop act, plaintiff's claim was barred. The trial court heard oral argument on defendant's motion and found that the dramshop act disallowed plaintiff's wrongful death claim. The trial court stated as follows:

Under present Michigan law, there is no basis for an alleged intoxicated person to bring a cause of action against the seller of alcohol where they have been injured

as a result of their intoxication; and I do believe that that's the only way you could bring this case. I don't think that there is any other basis to bring it. I don't believe that this is just a basic premises liability case. This case involves the consumption of alcohol, because that is the cause of the alleged injury or death to the . . . Plaintiff.

Now, on appeal, plaintiff argues that the trial court erred when it granted summary disposition in defendant's favor because a merchant owes a duty to its customers to render aid to its customers if they are injured or become ill while on the merchant's premises, and this is especially true if the merchant is aware of a specific risk of harm to a customer. Defendant counters that the trial court properly granted defendant's motion for summary disposition because the dramshop act barred plaintiff's claims for relief because the dramshop act is the exclusive remedy against a liquor licensee for an injury arising out of the sale or furnishing of intoxicating liquors.

We review de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(8). *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d 521 (2005). A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone. *Newton v Bank West*, 262 Mich App 434, 437; 686 NW2d 491 (2004). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The motion "may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

The dramshop act provides in relevant part:

(2) A retail licensee shall not directly or indirectly, . . . or by . . . agent . . . sell, furnish or give alcoholic liquor to a person who is visibly intoxicated.

(3) Except as otherwise provided in this section, an individual who suffers damage or who is personally injured by a . . . visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or visibly intoxicated person . . . shall have a right of action . . . against the person who by selling, giving, or furnishing the alcoholic liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the damage, injury, or death.

* * *

(9) The alleged visibly intoxicated person shall not have a cause of action pursuant to this section and a person shall not have a cause of action pursuant to this section for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged visibly intoxicated person.

(10) *This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor.* [MCL 436.1801. (Emphasis added.)]

Our Supreme Court has held that the dramshop act preempts common-law actions arising out of the furnishing¹ of alcohol by a liquor licensee. *Jackson v PKM Corp*, 430 Mich 262, 279; 422 NW2d 657 (1988).

Plaintiff contends that this case is no different than a general premises liability action and that the dramshop act should not act as a bar to her claims because defendant had a duty to render aid to Goodlander. However, plaintiff admits in her complaint that Goodlander purchased alcohol from defendant and died as a direct result of his intoxication. Despite plaintiff's attempts to mold the facts of the case into a general premises liability action--out of the realm of the dramshop act--the substantive facts of the case clearly involve an injury arising "*out of the selling, giving, or furnishing of alcoholic liquor*" "*against a licensee.*" MCL 436.1801(10). Therefore, on its face, then, the *Jackson* Court's interpretation of MCL 436.1801(10) preempts plaintiff's claims. *Jackson, supra* at 279. And the trial court's grant of summary disposition pursuant to MCR 2.116(C)(8) was appropriate.

We also reject plaintiff's argument that the trial court erred when it denied her motion to file an amended complaint. This Court reviews a trial court's decision denying a motion to amend a complaint for an abuse of discretion. *Tierney v University of Michigan Regents*, 257 Mich App 681, 687; 669 NW2d 575 (2003). After the trial court granted defendant's motion for summary disposition, plaintiff sought leave to file an amended complaint "that doesn't use the word alcohol anywhere in the complaint, and then the Court can judge if I've set forth a possessor of land cause of action." The trial court, however, denied plaintiff's motion to amend finding that the motion would be futile. An amendment is futile if it restates, or slightly elaborates on, allegations already pleaded. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 76; 592 NW2d 724 (1998). No matter how plaintiff couches her argument, based on the substantive facts set forth, the plain language of the dramshop act clearly bars her claims. MCL 436.1801(10). Accordingly, the trial court did not abuse its discretion by denying plaintiff's motion to amend her complaint based on futility.

Plaintiff also claims that the trial court should have granted her motion for reconsideration. We review for an abuse of discretion a trial court's decision on a motion for reconsideration. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The standard for granting a motion for reconsideration is whether a palpable error occurred that misled both the court and the parties and whether a different disposition must result from the correction of the error. MCR 2.119(F)(3); *Churchman, supra* at 233. Plaintiff has not shown a palpable error that misled the court and parties and that correction of the error requires a different

¹ In the interest of brevity, we use the term "furnishing" broadly to refer to "the selling, giving, or furnishing of alcohol" by a liquor licensee within the meaning of MCL 436.1801.

disposition. Therefore, the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration.

Affirmed.

/s/ Bill Schuette

/s/ Christopher M. Murray

/s/ Pat M. Donofrio